

MILAN S. PAPULAK

IBLA 82-475; IBLA 82-403

Decided March 26, 1982

Appeal from decision of California State Office, Bureau of Land Management, rejecting over-the-counter oil and gas lease offers. CA 11858, CA 11859, CA 11865, CA 11871, CA 12029, CA 12030.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Description--Oil and Gas Leases: Description of Land

Where an oil and gas lease offer includes land described as all of a particular section excluding fee land (Sec. __: ALL (Excl. fee)), the parcel description does not meet the requirements of 43 CFR 3101.1-4(a). The offer is defective as to that parcel and subject to rejection to that extent.

APPEARANCES: Milan S. Papulak, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Milan S. Papulak appeals the California State Office, Bureau of Land Management (BLM), decisions of December 14 and 15, 1981, and January 12, 1982, which rejected his over-the-counter oil and gas lease offers, CA 11858, CA 11859, CA 11865, CA 11871, CA 12029, and CA 12030, because the lands sought to be leased are not described properly. The decisions recited that 43 CFR 3101.1-4(a) requires an offer to lease to include the description of the land sought by subdivision, section, township, and range. Each of appellant's offers included several parcels described as "Sec. xx: ALL (Excl. fee)." BLM rejected offer CA 11859 for the additional reason that the offer described more than 10,240 acres in violation of 43 CFR 3110.1-3.

Appellant argues that there is no ambiguity in his description "ALL (Excl. fee)" because the "Land Office" knows with absolute certainty where the fee lands to be excluded are located in each section so described. He suggests that Mountain Fuel Supply Co., 13 IBLA 85 (1973), supports his position. He argues that the space provided in the offer (Form 3110-1, Eleventh

edition, March 1977) is not adequate for land descriptions now that the acreage limit of a single offer has been increased to 10,240 acres. ^{1/} He adverts to oil and gas leases issued by other BLM offices with land descriptions similar to those he used, that is, "All (Excl. fee)." He urges that his offers should be accepted, at least for the lands which are considered to have proper legal descriptions under the appropriate regulation.

Appellant made no response to the rejection of offer CA 11859 because of inclusion of more land than the regulations permit. The BLM decision relating to that offer has now become final.

[1] The pertinent regulation, 43 CFR 3101.1-4(a), states, "Surveyed Lands. If the lands have been surveyed under the public land rectangular system, each offer must describe the lands by legal subdivision, section, township and range."

The purpose of this regulation is to require the offeror to give a description which is at least sufficient on its face to delimit the land applied for. Charles J. Babington, 71 I.D. 110, 113 (1964). The description "ALL (Excl. fee)" does not do this. Appellant has not denied that his use of this language to describe certain parcels in his offers does not comply with the regulation; rather he argues that there is no ambiguity in the description enabling BLM to determine what he sought simply by checking the status plats. This argument points to one of the basic reasons for the regulation. BLM receives a large volume of oil and gas lease applications and simply does not have the time or money to spend determining the precise proper description of the lands offerors desire. The burden of submitting an offer which accurately describes the lands sought is placed by the regulation appropriately on those seeking to benefit from the public lands. See Mountain Fuel Supply Co., *supra* at 87.

An additional reason for the requirement that the land sought be apparent on the face of an offer is that the amount of land described determines the amount of rental which the offeror must submit with his offer. BLM had no way of knowing upon examining appellant's offer whether appellant had submitted the required rental. We note that appellant apparently had checked the land status of the sections at issue because he submitted rentals for acreage less than a full 640-acre section. ^{2/} Since he had done so, we do not find it unreasonable to require that he describe the actual lands sought in the terms required by the regulation.

We disagree that Mountain Fuel Supply Co., *supra*, supports appellant's argument that a description is permissible if BLM on its own can determine the actual lands sought. We held therein that BLM had no duty to guess which

^{1/} There is no prohibition against an offeror attaching separate pages to show the correct land description if the space provided on the offer form is inadequate.

^{2/} We have assumed that appellant did not intend his description to be interpreted to mean all available lands in a section because he did not submit rentals for full sections as he is required to do in such a case. See Milan S. Papulak, 30 IBLA 77 (1977).

lands an offeror intended to include in his offer or authority to alter a lease offer to make it valid. The problem with Mountain Fuel's offer was a typographical error (E 1/2 instead of W 1/2) in an otherwise proper land description which created an ambiguity on the face of the lease offer. The problem with appellant's offer is that it has an improper land description; it is not a case of ambiguity.

Appellant's argument that rejection of his offers is contrary to actual practice of some BLM offices is not persuasive. The Board has held that past incorrect application of law or regulations in the adjudication of oil and gas lease offers is not authorization for failure to follow the regulations in the current adjudication of an offer. David A. Provinse, 35 IBLA 217 (1978). See also Jack M. Mosely, 62 IBLA 220 (1982).

Finally, appellant urges that BLM should have accepted his offers for those lands correctly described. We are not aware of any reason compelling rejection of an entire oil and gas lease offer because the descriptions for some of the lands sought are defective. The BLM decisions as to offers CA 11858, CA 11865, CA 11871, CA 12029, and CA 12030 are modified to reflect rejection of the offers only as to the lands improperly described. Cf. Jacob N. Wasserman, 74 I.D. 392 (1967) (lease canceled in part to extent offer contained defective description).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the California State Office are affirmed as modified.

Douglas E. Henriques
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

